

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

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| In the Matter of                          | ) |                      |
|   | ) |                      |
| Promoting Investment in the 3550-3700 MHz | ) | GN Docket No. 17-258 |
| Band                                      | ) |                      |
|   | ) |                      |

**COMMENTS OF THE RURAL WIRELESS ASSOCIATION, INC.**

**RURAL WIRELESS ASSOCIATION, INC.**

Caressa D. Bennet  
5185 MacArthur Boulevard, NW, Suite 729  
Washington, DC 20016  
(202) 551-0010

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## SUMMARY

The Rural Wireless Association, Inc. (“RWA”) submits its comments in response to the Federal Communications Commission (“FCC” or “Commission”) *Notice of Proposed Rulemaking* seeking comment on several proposed changes to the FCC’s rules governing Priority Access Licenses (“PALs”) to be issued in the 3550-3700 MHz band (“3.5 GHz Band”) Citizens Broadband Radio Service (“CBRS”). RWA opposes the proposed rule changes spelled out in the NPRM as both unnecessary to spur further investment in the 3.5 GHz band and as impeding the ability of RWA members and other small and rural entities to participate in PAL auctions and gain access to the protected bands of the 3.5 GHz spectrum.

Expanding the PAL license size is not needed to encourage investment in the 3.5 GHz Band. In 2015, the Commission adopted census tract-based PAL license areas to allow flexible and targeted network deployments, to promote efficient use of the spectrum, and to allow easy aggregation to accommodate larger network footprints. The Commission praised the lower capital investment associated with smaller service areas. Further, entities that wish to serve traditional geographic license areas face no impediments to aggregating multiple contiguous census tracts.

The Commission’s NPRM would upend the CBRS license framework by expanding PAL area sizes. Though the NPRM does not propose to adopt a particular larger license area, it does ask specifically whether PEAs would “strike an appropriate balance between facilitating access to spectrum by both large and small providers while incentivizing investment in and rapid deployment of new technologies[.]” For the 3.5 GHz band, the answer is no. To the extent the Commission is resolutely against licensing all PALs on a census tract basis, it should at a

minimum consider preserving a subgroup of census tract PALs either as a channel grouping or as a geographic segment.

Lengthening the PAL license term to ten years will result in spectrum lying fallow in rural areas and further deprive small and rural providers of access to protected 3.5 GHz spectrum. The Commission proposes to modify the PAL license terms from three to ten years with a built-in renewal expectancy. Applying such a licensing regime model to the CBRS would completely undercut the Commission's innovative objectives with the band and would permit large providers to accumulate CBRS spectrum in contravention of Section 309(j) of the Act, which is intended "to prevent stockpiling or warehousing of spectrum." To the extent that the Commission is unwilling to preserve the three-year PAL license term, RWA urges the Commission not to adopt a term beyond five years. Regarding renewal expectation, RWA supports preserving the current rule permitting a second term following the initial term. Should the Commission allow PALs to be renewable, then anything not covered should be available for others to apply, using a "keep-what-you-serve" approach whereby areas deemed unserved by a specific performance deadline become available for reassignment by the Commission.

Finally, the Commission's flawed Initial Regulatory Flexibility Analysis ("IRFA") fails to address the NPRM's economic impact on small entities. The IRFA lacks current and accurate classifications and reasonable estimates of the substantial number of small entities subject to NPRM. These and other omissions suggest that the Commission has either overlooked or ignored the numerous small businesses and providers that participated in droves to convey the harmful economic impact that awaits should the Commission adopt the proposed rule changes.

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the NPRM's deficient Initial Regulatory Flexibility Analysis, it is clear the Commission has overlooked the economic impact of the rule changes raised in the NPRM on small businesses and ignored the substantial record established in response to the petitions for rulemaking filed by T-Mobile, USA, Inc. ("T-Mobile")<sup>4</sup> and CTIA.<sup>5</sup>

**I. EXPANDING THE PAL LICENSE SIZE IS NOT NEEDED TO ENCOURAGE INVESTMENT IN THE 3.5 GHZ BAND, AND IN NO CASE SHOULD THE COMMISSION ADOPT PARTIAL ECONOMIC AREAS FOR ALL LICENSE AREAS.**

In 2015, the Commission adopted census tract-based PAL license areas to allow flexible and targeted network deployments, to promote efficient use of the spectrum, and to allow easy aggregation to accommodate larger network footprints.<sup>6</sup> Census tracts vary in size and population density, particularly in rural areas where they can be large and sparsely populated. The Commission also found census tracts to be practical as they nest into common license areas (e.g., Cellular Market Areas, Economic Areas, and Partial Economic Areas ("PEAs")) as well as political subdivisions.<sup>7</sup> Census tracts also nest into county boundaries.

The Commission also noted that "the mandate of Section 309(j) strongly supported its goal, particularly in 'prescrib[ing] area designations,' of providing economic opportunity to a wide variety of applicants."<sup>8</sup> Specifically, the Commission praised the lower capital investment associated with smaller service areas and found that the use of larger, traditional license areas is not consistent with the Commission's desire to promote innovative, low power uses in the CBRs

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<sup>4</sup> T-Mobile USA, Inc., *Petition for Rulemaking*, GN Docket No. 12-354, RM-11789 (filed June 19, 2017).

<sup>5</sup> CTIA, *Petition for Rulemaking*, GN Docket No. 12-354, RM-11788 (filed June 16, 2017).

<sup>6</sup> Amendment of the Commission's Rules with Regard to Commercial Operations in the 3550-3650 MHz Band, *Report and Order and Second Further Notice of Proposed Rulemaking*, FCC 15-47, ¶¶94-101 (rel. April 21, 2015) ("3.5 GHz R&O").

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

band, such as small cells.<sup>9</sup> Significantly, the Commission expressly observed that traditional licensing areas will not allow users of the band to acquire PALs only for those specific geographic areas they intend to serve and that “[d]ivesting large, unwanted swaths through secondary markets transactions could impose *significant transactions costs*.”<sup>10</sup> On the other hand, entities that wish to serve traditional geographic license areas face no impediments to aggregating multiple contiguous census tracts.

The Commission’s NPRM could upend the CBRS license framework by expanding PAL area sizes.<sup>11</sup> Though the NPRM does not propose to adopt a particular larger license area, it does ask specifically whether PEAs would “strike an appropriate balance between facilitating access to spectrum by both large and small providers while incentivizing investment in and rapid deployment of new technologies[.]”<sup>12</sup> For the 3.5 GHz band, the answer is no. Adopting PEAs at this late stage would be tantamount to a bait-and-switch for small and rural providers, particularly those holding legacy 3.65 GHz licenses, who have relied for well over two years on the original 2015 rules. Unlike the low-band, high power spectrum offered to bidders in the 600 MHz auction seeking to deploy mobile and/or fixed wireless networks across broader service areas, the 3.5 GHz band has lower power limits and will be used for smaller scale and targeted deployments.

By virtue of their expanded coverage as compared to census tracts, PEA-based licenses would cause prices to soar at auction and would effectively foreclose many small and rural providers—particularly new entrants—from the PAL auction process. A PEA license framework also would impose significant secondary market transaction costs on a broad group of smaller

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<sup>9</sup> *Id.*

<sup>10</sup> *Id.* (emphasis added).

<sup>11</sup> NPRM at ¶23.

<sup>12</sup> NPRM at ¶24.

entities that desire direct CBRS access. For over two years many of these entities have relied upon and made investments on the basis of the Commission's existing CBRS license framework—one that has run its course through reconsideration.<sup>13</sup> Small, rural providers have the desire and motivation to serve rural communities. Changing the geographic area licensing scheme at this late date all but ensures that no small providers or new business entrants will successfully utilize the spectrum. Only large carriers have the resources necessary to offer wireless broadband service on a PEA basis. This ultimately would harm rural consumers and the objectives of competition by denying rural providers and the communities they serve the benefits of CBRS technology. In no event should the Commission modify all PAL license areas to PEAs.

To the extent the Commission is resolute against licensing all PALs on a census tract basis, it should at a minimum consider preserving a subgroup of census tract PALs either as a channel grouping or as a geographic segment. For instance, the Commission may consider a hybrid approach in which PALs in urban areas are auctioned on a Metropolitan Statistical Area (“MSA”) basis and in rural areas on a census tract basis using the boundaries of Rural Service Areas (“RSAs”). MSAs and RSAs together comprise Cellular Market Areas (“CMAs”), which have served as the basis for several prior Commission auctions.<sup>14</sup> Alternatively, RWA would not oppose the adoption of county-based licenses for PALs. Similar to census tracts, counties nest cleanly into CMAs as well as political subdivisions. Short of preserving census tracts entirely, such hybrid approaches would largely preserve the right-sized coverage and cost of PALs that

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<sup>13</sup> The example of Indigo Wireless, Inc., an RWA member which relied on the current CBRS rules in making investment decisions, is discussed below.

<sup>14</sup> Prior FCC auctions that used CMAs include Auction 66 (AWS-1), Auction 73 (700 MHz), Auction 78 (AWS-1 and Broadband PCS), Auction 97 (AWS-3). *See generally* <http://wireless.fcc.gov/auctions/>.



would afford small and rural providers the ability to participate in PAL auctions and bring cutting edge broadband technologies to rural areas without delay.

CMRS and broadband provider Indigo Wireless, Inc. (“Indigo”) in rural northern Pennsylvania is among RWA’s members that reasonably relied on the Commission’s current CBRS rules in making investment decisions for ongoing and future network improvements. Indigo acquired 3.65 GHz spectrum in 2013 with the intent to launch fixed wireless service in 2013. This past year, Indigo invested in a new Evolved Packet Core and is ensuring that it has fully redundant links with backup to ensure continued service at all of its growing number of sites.<sup>15</sup> To this end, Indigo invested “upwards of \$1 million in network improvements.”<sup>16</sup>

Indigo was given further reason to rely on its investment decisions by the FCC’s decision in 2015 to adopt rules that would allow Indigo and other 3.65 GHz license holders to safely transition their operations into the CBRS 3.5 GHz Band without compromising continuity of service to customers or jeopardizing investments toward growing and improved services.”<sup>17</sup> Indigo has found itself “in the unimaginable position of scrambling to rescue its spectrum and investments” as the proposals advanced by T-Mobile and CTIA and now by the Commission “would most likely make CBRS licenses unaffordable to Indigo and would bring its current 3.65 GHz investment and transition plans to a screeching halt.”<sup>18</sup> Chief among Indigo’s concerns is how the proposals would “make accessing the spectrum more difficult by increasing the size of the licenses and more expensive by raising the bar to participate [in PAL auctions].”<sup>19</sup> Indeed,

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<sup>15</sup> Comments of Indigo Wireless, Inc., GN Docket No. 12-354 (July 24, 2017).

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* For example, the census tract license areas and three-year terms provided by the 2015 rules would facilitate Indigo’s transition from 3.65 GHz to 3.5 GHz by making PAL licenses affordable and manageable in scope.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

Indigo has now slowed its orders for additional equipment as it awaits the outcome of this proceeding.

### **Secondary Markets Are Insufficient Alternatives for Small and Rural Carriers**

Relegating rural entities to the secondary market in order to obtain access to 3.65 GHz spectrum is an inadequate solution, as such transactions are costly, time-consuming and infrequently available. The secondary market is a more effective tool for large operators to consolidate spectrum than it is for small and rural operators to acquire it. RWA's members often must wait until a licensee is sufficiently incentivized to sell spectrum and then pay a significant premium to gain access to spectrum. Moreover, the transactional costs of making spectrum available to companies that intend to use it to provide service to rural areas can nullify any economic benefits of such a transaction for the spectrum holder, which provides further disincentive for licensees to engage interested parties. This underscores the importance of using smaller geographic license areas and allowing rural carriers the opportunity to effectively participate in auctions because the secondary market will not necessarily fix things later.

### **The Commission Should Adopt Bidding Credits in the 3.65 GHz Auction**

One measure that RWA supports to encourage participation both in initial and subsequent PAL auctions is the inclusion of bidding credits for designated entities, including credits for Small Businesses and Rural Service Providers. In July 2015 and in anticipation of the 600 MHz Incentive Auction, the Commission adopted<sup>20</sup> the very first bidding credit for eligible rural

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<sup>20</sup> Updating Part 1 Competitive Bidding Rules, et al., *Report and Order; Order on reconsideration of the First Report and Order; Third Order on Reconsideration of the Second Report and Order; Third Report and Order*, WT Docket Nos. 14-170 and 05-211; GN Docket No. 12-268; RM-11395 (rel. July 21, 2015).

service providers<sup>21</sup> to help them compete for spectrum licenses more effectively and to provide consumers in rural areas with competitive offerings. The Commission also updated its gross revenue thresholds to reflect the capital challenges that small businesses face in the current wireless industry.<sup>22</sup> In light of the proposed PAL rule changes in the NPRM that would stifle participation by small businesses and rural providers, the Commission should ensure that the same bidding credits made available in the Incentive Auction are equally available for future PAL auctions.

## **II. LENGTHENING THE PAL LICENSE TERM TO TEN YEARS WILL RESULT IN SPECTRUM LYING FALLOW IN RURAL AREAS AND FURTHER DEPRIVE SMALL AND RURAL PROVIDERS OF ACCESS TO PROTECTED 3.5 GHZ SPECTRUM.**

In adopting the current PAL license term of three years (with a single optional three-year renewal term), the Commission never intended to mirror the traditional licensing regime that characterizes most FCC-authorized spectrum bands (*i.e.*, a lengthy license term with multiple renewal periods).<sup>23</sup> Rather, the adoption of a short license term, while not foreclosing nationwide mobile wireless providers from participating in PAL auctions, would deter large carrier investment and thereby promote deployments by a wide range of service providers and lower costs of entry for small and rural providers as well as new entrants.<sup>24</sup>

Taking its cue from CTIA and T-Mobile, the Commission now proposes to lengthen the PAL license term from three years to ten years.<sup>25</sup> The Commission previously addressed the issue of longer license terms in the original rulemaking proceeding, including proposals by T-

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<sup>21</sup> As defined by the Commission, an eligible rural service provider provides commercial communications services to a customer base of fewer than 250,000 combined wireless, wireline, broadband, and cable subscribers and serves primarily rural areas. *See id.*

<sup>22</sup> *Id.*

<sup>23</sup> 3.5 GHz R&O at ¶108.

<sup>24</sup> 3.5 GHz R&O at ¶107.

<sup>25</sup> NPRM at ¶13.

Mobile and CTIA.<sup>26</sup> The Commission ultimately determined and later affirmed that a three-year PAL license term with no renewal expectation (except after the initial term) was a proper balance between some commenters' desire for flexibility and others' need for certainty.<sup>27</sup> The discussion concerning license term has been "thoroughly considered by the Commission in the 3.5 GHz R&O"<sup>28</sup> and the Commission already determined that "the current rules will effectively incentivize network investment"<sup>29</sup> given the "differences in the nature and scope of service"<sup>30</sup> in the shared CBRS band. Despite the increased interest in the 3.5 GHz Band for 5G network deployments since the adoption of the 3.5 GHz R&O, the Commission need not adopt rule changes that would squeeze out small and rural providers and essentially convert the band into a 5G-only band for the exclusive use of the largest carriers. As the Commission continues to authorize other bands for 5G,<sup>31</sup> the 3.5 GHz Band can support 5G and other wireless broadband uses.

Consistent with the comment record in the various dockets discussing the 3.5 GHz Band,<sup>32</sup> RWA maintains that applying the traditional licensing regime model to the CBRS would

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<sup>26</sup> T-Mobile initially requested a term "similar to the 10-year licenses commonly issued in other wireless services" while CTIA specified a five-year term in its Petition for Reconsideration.

<sup>27</sup> 3.5 GHz R&O at ¶107; Amendment of the Commission's Rules with Regard to Commercial Operations in the 3550-3650 MHz Band, *Order on Reconsideration and Second Report and Order*, FCC 16-55, ¶43 (rel. May 2, 2016) ("3.5 GHz Reconsideration Order").

<sup>28</sup> 3.5 GHz Reconsideration Order at ¶43.

<sup>29</sup> *Id.* at 44.

<sup>30</sup> *Id.* at 45.

<sup>31</sup> *See, e.g.*, Use of Spectrum Bands Above 24 GHz for Mobile Radio Services et al., GN Docket No. 14-177 et al., *Report and Order and Further Notice of Proposed Rulemaking*, FCC 16-89 (rel. July 14, 2016) and *Second Report and Order, Second Further Notice of Proposed Rulemaking, Order on Reconsideration, and Memorandum Opinion and Order*, FCC 17-152 (rel. November 22, 2017).

<sup>32</sup> *See, e.g.*, Comments of Amplex Electric, Inc. d/b/a Amplex Internet; Comments of Starry, Inc.; Joint Comments of RWA and NTCA; GN Docket No. 12-354 (July 24, 2017); and Reply Comments of NE Colorado Cellular, Inc., d/b/a Viaero Wireless; Reply Comments of Vivint

completely undercut the Commission’s innovative objectives with the band and would permit large providers to accumulate CBRS spectrum in contravention of Section 309(j) of the Act, the purpose of which is “to prevent stockpiling or warehousing of spectrum.”<sup>33</sup> As the Commission is aware, T-Mobile and AT&T recently had to seek an extension and waiver of the Commission’s 700 MHz rules to avoid an accelerated license term expiration for failing to meet construction benchmarks in rural areas, even though other rural carriers (including RWA members) were willing to acquire and build out any returned 700 MHz spectrum that would have become available as a result of enforcement of the performance requirement.<sup>34</sup> These are just a few recent examples of spectrum licensed for ten-year terms that has lain fallow in rural areas. Rather than repeating history, the Commission should refrain from increasing the length of the PAL license term to ten years.

To the extent that the Commission is unwilling to preserve the three-year PAL license term, RWA urges the Commission not to adopt a term beyond five years. To ensure that PALs are fairly distributed among all manner of licensees and efficiently constructed, the Commission should correlate PAL license term length with PAL license size. Should the Commission extend term lengths to five years, then county-based licenses would be appropriate. Though counties are greater in size than census tracts, five year terms in such license areas would still allow carriers to efficiently deploy their networks in correlation to potential subscribers within the

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Wireless, Inc.; Reply Comments of Cantor Telecom Services, L.P.; GN Docket No. 12-354 (August 8, 2017).

<sup>33</sup> 47 U.S.C. § 309(j).

<sup>34</sup> Letter from Roger S. Noel, Chief, Mobility Division, Wireless Telecommunications Bureau, to Steve B. Sharkey, T-Mobile License LLC, DA 16-249, WT Docket No. 16-319 (rel. Dec. 21, 2016); Letter from Roger S. Noel, Chief, Mobility Division, Wireless Telecommunications Bureau, to Robert Vitanza, AT&T Services, Inc., DA 17-63, WT Docket No. 16-335 (rel. Jan. 18, 2017). T-Mobile’s waiver was premised on its acquisition of the 700 MHz spectrum from Bresnan Communications, LLC, a wholly-owned subsidiary of Charter Communications, Inc., which failed to meet the interim 700 MHz construction deadline.

license area while accounting for any challenges that may arise from serving a larger territory. If, however, the Commission rejects the foregoing arguments about why the current license term should be retained and instead adopts 10-year terms for PALs, it absolutely should preserve the census tract license areas. Census tracts best allow licensees to target specific subscriber markets and therefore pose the least risk of spectrum lying fallow.

Regarding renewal expectation, RWA supports preservation of the current rule permitting a second term following the initial term. Should the Commission extend the PAL term to a length up to five years, then RWA would support preserving the opportunity for a second license term up to five years. Should the Commission allow PALs to be renewable, then anything not covered should be available for others to apply using a “keep-what-you-serve” approach whereby areas deemed unserved by a specific performance deadline become available for reassignment by the Commission.<sup>35</sup> This modification would acknowledge the infrastructure challenges that previously had been raised in the CTIA Petition (*e.g.*, siting, zoning, permitting), which can be particularly challenging in urban areas, without raising the specter of warehousing spectrum in rural areas because the unused portion of the license would become available for reuse.

### **III. THE COMMISSION’S FLAWED INITIAL REGULATORY FLEXIBILITY ANALYSIS FAILS TO ADDRESS THE NPRM’S ECONOMIC IMPACT ON SMALL ENTITIES.**

The Commission should reject its proposed PAL rule changes because the NPRM’s Initial Regulatory Flexibility Analysis (“IRFA”) is fatally flawed. Contrary to the requirements of the Regulatory Flexibility Act, as amended (“RFA”),<sup>36</sup> the Commission’s purported analysis of the possible significant economic impact on a substantial number of small entities is woefully

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<sup>35</sup> *See, e.g.*, C.F.R. § 27.14(g)(2).

<sup>36</sup> 5 U.S.C. §§ 601 *et seq.*

deficient. The IRFA lacks current and accurate classifications and reasonable estimates of the substantial number of small entities subject to the NPRM. Significantly, the IRFA even fails to identify current 3.65 GHz licensees, who are the entities most likely to be impacted by the NPRM. The IRFA also lacks an analysis of the significant economic impact of the proposed PAL rule changes, which mark an obvious departure from the existing CBRS rules. The IRFA further lacks any discussion or analysis of various significant alternatives to the NPRM's proposed rules, despite substantial discussion of alternatives raised by the comments in the record. These omissions reveal that the Commission has either overlooked or ignored the comments filed by numerous small businesses and providers that participated in droves to convey the harmful economic impact that awaits should the Commission adopt the proposed rule changes. Because the NPRM was founded on an inadequate IRFA that glosses over the impact of the proposed rule changes on small businesses and falls short of RFA requirements, the Commission should reject the NPRM's proposed PAL rule changes.

#### **IV. CONCLUSION.**

Based on the foregoing, the Commission should not adopt the rule changes proposed in the NPRM as they are not needed to drive investment in the 3.5 GHz band. The rules originally adopted in 2015 were sufficiently debated and affirmed, and already have triggered numerous entities throughout the CBRS ecosystem to invest in future deployments including 5G. Moreover, the Commission has not sufficiently analyzed the potential economic impact of the NPRM on small businesses. Accordingly, it should preserve the currently adopted and affirmed rules and refrain from sudden major rule changes that would undermine current investments, market expectations, and the ability of operators and investors to rely on the Commission's rules. If the Commission is unwilling to do so, then in no event should it adopt PEAs as the PAL area

size nationwide. The Commission also should keep PAL term length proportional to PAL area size but not extending beyond five years.

Respectfully submitted,

**RURAL WIRELESS ASSOCIATION, INC.**

By: */s/ Caressa D. Bennet*

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Caressa D. Bennet  
General Counsel  
5185 MacArthur Boulevard, NW  
Suite 729  
Washington, DC 20016  
(202) 551-0010

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